

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,
4 -against-

18 Cr. 614 (KMK)
Conference

5 SIMON GOLDBRENER, PERETZ KLEIN,
6 SUSAN KLEIN, BEN KLEIN, MOSHE
7 SCHWARTZ, SHOLEM STEINBERG and
8 ARON MELBER,

9 Defendants.

10 United States Courthouse
11 White Plains, New York
12 July 10, 2019

13 THE HONORABLE KENNETH M. KARAS,
14 District Court Judge

15 GEOFFREY S. BERMAN
16 United States Attorney for
17 the Southern District of New York
18 SCOTTEN HAGAN
19 Assistant United States Attorney

20 SHULMIS PELTZ
21 Attorney for Simon Goldbrener

22 SUSAN NECHELES
23 CAROLINE GROSSHANS
24 Attorneys for Peretz Klein

25 JEREMY GUTMAN
Attorney for Susan Klein

DEBORAH LOEWENBERG
PAUL BRICKFIELD
Attorneys for Ben Klein

STEVEN YUROWITZ
Attorney for Moshe Schwartz

MELISSA MADRIGAL
Attorney for Sholem Seinberg

ILANA HARAMATI
Attorney for Aron Melber

1 THE CLERK: All rise. The Honorable Kenneth M. Karas
2 presiding. United States of America versus Simon Goldbrener,
3 et al., 18CR614.

4 Counsel, please state your appearances.

5 MR. SCOTTEN: Good afternoon, your Honor. Hagan
6 Scotten for the government.

7 THE COURT: Good afternoon, Mr. Scotten.

8 MR. YUROWITZ: Good afternoon, your Honor. Steven
9 Yurowitz for the defendant, Moshe Schwartz, who's present.

10 THE COURT: Good afternoon.

11 MS. MADRIGAL: Good afternoon, your Honor. Melissa
12 Madrigal on behalf of Sholem Steinberg sitting in the box.

13 THE COURT: Good afternoon.

14 MS. HARAMATI: Good afternoon, your Honor. Ilana
15 Haramati for Aron Melber.

16 THE COURT: Good afternoon.

17 MR. BRICKFIELD: Good afternoon, Paul Brickfield for
18 Ben Klein.

19 THE COURT: Good afternoon.

20 MS. LOEWENBERG: Good afternoon, your Honor. Deborah
21 Loewenberg for Ben Klein, who is present.

22 THE COURT: Good afternoon.

23 MS. NECHELES: Your Honor, Susan Necheles and Carolyn
24 Grosshans for Mr. Peretz.

25 THE COURT: Good afternoon.

1 MR. GUTMAN: Jeremy Gutman for Susan Klein, who's
2 present.

3 THE COURT: How's the phone doing?

4 MR. GUTMAN: Sorry about that, your Honor. It's
5 fixed.

6 THE COURT: All right. Good afternoon.

7 MS. PELTZ: Good afternoon, your Honor. I'm sorry,
8 Shulamis Peltz for Simon Klein. The defendant is present.

9 THE COURT: All right, good afternoon.

10 Please be seated everybody.

11 Discovery update.

12 MR. SCOTTEN: The discovery remains produced, your
13 Honor. I think it was two conferences ago we confirmed it's
14 all produced. We have a proposed motion schedule, I think
15 everyone agrees on it, if your Honor would like to hear it.

16 THE COURT: All right.

17 MR. SCOTTEN: Thank the Court for its indulgence.

18 September 30th for a Bruton disclosure by the
19 government to the defendants, in case they have any motions on
20 that score.

21 THE COURT: Why so long?

22 MR. SCOTTEN: The government certainly has no
23 objection to earlier disclosure for all of this. I'll leave
24 that to the defense to address. We'd be happy with 30 days
25 from now.

1 THE COURT: Okay, well why don't you finish and we'll
2 talk.

3 MR. SCOTTEN: Sure. November 25th for defense
4 motions; December 23rd for government response; January 13th
5 for defense replies, if any.

6 I think once we get to the motions, they're a bit
7 spread out because they ended up over the holidays. In terms
8 of moving up the entire thing, the government certainly has no
9 objection.

10 THE COURT: Well is the reason for the late Bruton
11 disclosure because people don't want to be doing motions during
12 the holidays, is that the idea?

13 MR. SCOTTEN: I think the reason for the late Bruton
14 disclosure is whichever defendants may have made statements
15 would prefer those statements not be out there. For example,
16 if they were going to resolve the case in a non-trial way. I'm
17 happy to disclose it tomorrow if the Court tells me to. I
18 think that's more a defense request.

19 THE COURT: Anybody want to speak up in defense of
20 the September 30 deadline and why it shouldn't be earlier?

21 MS. PELTZ: Your Honor, I'm due in September. I will
22 be out most of September and October for maternity leave and
23 the holidays. So can we do motions in November?

24 THE COURT: Okay.

25 MS. NECHELES: Your Honor, I don't think that goes to

1 the why the government should not be disclosing. I was
2 actually surprised that there hadn't been a Bruton disclosure
3 before. I thought that was part of the discovery that would
4 have been produced.

5 THE COURT: I don't have a problem adjusting motion
6 schedules to accommodate everything from the holidays to
7 paternal leave, maternal leave, anything that involves
8 obviously some serious personal issues for counsel, but I don't
9 know why we wouldn't make the government do the Bruton
10 disclosure in the next few weeks, and we can still keep the
11 motion schedule, if that's what collectively you all want and
12 you can talk to your clients, I don't have a problem with that.

13 So is anybody going to object if I say to the
14 government they've got to do the *Bruton* disclosure in the next
15 few weeks?

16 MS. NECHELES: No, your Honor.

17 MR. SCOTTEN: August 1st, your Honor. I mean, we're
18 fine with whatever date the Court sets?

19 THE COURT: What's today? Let's say the 24th, two
20 weeks.

21 MR. SCOTTEN: That's good.

22 THE COURT: And then I'm happy to keep the motion
23 schedule, because I assume that's all what you agreed to in
24 part because of the holidays and other personal issues.

25 Fair statement?

1 Anybody object to that?

2 MR. YUROWITZ: No.

3 THE COURT: You talked to your clients about this?
4 Because this is a relaxed schedule and it's their speedy trial
5 rights that are implicated by this schedule.

6 So anybody not talk to their clients about it? Okay.

7 All right, so then I guess the next question is any
8 objection to excluding time from now to November 25th, which is
9 when the motions are due?

10 Silent.

11 MR. SCOTTEN: No objection.

12 MR. YUROWITZ: No objection.

13 MR. BRICKFIELD: No objection.

14 THE COURT: Okay, then I'll prospectively exclude
15 time from today until November 25th of this year under the
16 Speedy Trial Clock, finding it's in the interest of justice to
17 do so. That finding is based on the fact that counsel need
18 time to prepare the motions, at least one attorney is going to
19 have some availability issues from now until November 25th, and
20 also there are the holidays which would intervene in the
21 ability to prepare the motions any earlier. So I therefore
22 find that the interests of justice from this exclusion outweigh
23 the defendants' and the public's interest in a speedy trial.
24 The finding is made pursuant to 18 U.S.C., Section
25 3161(h) (7) (A).

1 I guess two other questions.

2 First is is there anything else we need to take up?

3 MR. SCOTTEN: Not from the government, your Honor.

4 THE COURT: Okay. Counsel?

5 MR. YUROWITZ: No, your Honor.

6 THE COURT: Okay. Second is do we want to get
7 together before we have argument on the motions? Is it needed?
8 I'll do whatever you want.

9 MR. SCOTTEN: Government can't think of a reason,
10 your Honor.

11 MR. YUROWITZ: I don't think we need before. We
12 would ask for oral argument on the motion.

13 THE COURT: Of course. No, that's a given. And
14 there may be -- I obviously don't know what the motions are
15 going be to, might have to have a hearing as well.

16 I'm just saying between now and then, is there any
17 reason for all of us to get together? Obviously, if there are
18 individual issues that come up, people can write me a letter
19 and we can conference the case.

20 MS. NECHELES: Your Honor, the only issue that's --
21 and I don't know how your Honor wants to deal with this really.
22 There are at least -- there are some significant issues with
23 discovery. You know, the government, we have different views,
24 that might surprise you, than the government has.

25 In particular, it's complicated and the case law has

1 changed, and there's lots of issues about computers that were
2 seized from third parties and what -- you know, the government
3 has a whole database sitting there that they're able to
4 continue to search if they go back for a warrant or whatever,
5 and the defense doesn't have access to that, doesn't have the
6 same access of materials to search and that seems to us to be a
7 violation of Rule 16. And so I'm a little concerned that we
8 won't be addressing any of discovery issues for so long. Some
9 people talked about maybe doing a bifurcated motion schedule to
10 raise the discovery issues.

11 THE COURT: If you want to -- I understand the point,
12 and of course part of your argument is some of what might go
13 into the other motions is affected by what there is in the
14 discovery and what there should be in the discovery. And we've
15 done this before in other cases. So if you want to make a
16 separate motion between now and November 25th, that's fine. If
17 you want to make certain motions related to the discovery in
18 terms of how it's been produced or what has not been produced,
19 that's fine, and you and the government can agree on a schedule
20 and send me a letter and I'm sure it will be approved.

21 That way, if you want to talk to some of the other
22 lawyers and talk to the government and let me know what you
23 want to do, that's fine.

24 MR. YUROWITZ: I would just say, if we end up
25 deciding to do that, if he could just, as part of that, we may

1 ask your Honor to -- if we could have argument on that.

2 THE COURT: You love argument.

3 MS. NECHELES: He's very good at it.

4 MR. YUROWITZ: I like her.

5 But argument really before the motion.

6 THE COURT: Yes.

7 MR. YUROWITZ: That's all.

8 THE COURT: I get it. That's why I was saying that
9 it may be that some of what you're going to want to put in the
10 subsequent motions is affected by what happens with the
11 discovery. Sure.

12 Okay, so I'll just wait for a letter saying, here's
13 what we want to do, here's the proposed schedule, please so
14 order it, and I'll so order it.

15 Fair enough?

16 MR. YUROWITZ: Yes.

17 THE COURT: Argument for sure. That's a lot of
18 pressure. You know, you've raised expectations.

19 Anything else? Okay, then I'll bid you a pleasant
20 afternoon.

21 MR. SCOTTEN: Thank you, your Honor.

22 MR. BRICKFIELD: Thank you.

23 MS. NECHELES: Thanks.

24 (Proceedings concluded)

25

Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

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